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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,113	09/25/2003	Jonas A. Navickas	NVCK-CHN1	9824

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EXAMINER

MOHANDESI, JILA M

ART UNIT PAPER NUMBER

3728

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/673,113		NAVICKAS, JONAS A.	
	Examiner		Art Unit	
	Jila M. Mohandesi		3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 34,35,37 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33, 36 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11-15-05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 34, 35, 37 and 38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 34 is directed to a method of making the storage system in an endless loop, claims 35 and 37 are directed to a handling system instead of the storage system and claim 38 is directed to a method of making the storage system, Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 35 and 38 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

2. The replacement drawings were received on February 14, 2006. In replacement Fig. 1, the lines are not uniformly thick and well defined. See 37 CFR 1.84(i).

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means", "**comprising**" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The

disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The disclosure is objected to because of the following informalities: In the specification under Brief Description Of Drawings, brief description of the newly added Figure 10 needs to be added. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 13, 16, 17, 20-22, 25-27, 31 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 recites the limitation "the insert" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 27 recites the limitation "the contents" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 is an improper Markush-type claim. It is improper to use the term "comprising" instead of "consisting of" Ex parte Dotter, 12 USPQ 382 (Bd. App. 1931). 'It is not clear, since comprising is an open-ended term, whether the applicant intends to limit the claim to liquid, gel powder, a substance that degrades when exposed to atmosphere a combination of these substances or other types of substances.

Claim 21 is an improper Markush-type claim. It is improper to use the term "comprising" instead of "consisting of" Ex parte Dotter, 12 USPQ 382 (Bd. App. 1931).

'It is not clear, since comprising is an open-ended term, whether the applicant intends to limit the claim to permanent seal, re-sealable seals a combination of these seals with other seals or other types of seals.

Similarly claims 13, 16, 20, 22, 25, 31, 35 and 37 are also an improper Markush-type claim. It is improper to use the term "comprising" instead of "consisting of " Ex parte Dotter, 12 USPQ 382 (Bd. App. 1931).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,2, 8, 10, 3, 15, 16, 19-20, 32-33 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Morton (Des. 336,367). Morton discloses a storage system, comprising: two or more pouches, joined sequentially pouch-lip to pouch lip by a flexible coupling portion, wherein each coupling portion flexes to permit manipulation of the joined set of pouches. See Figures 1-5 embodiments.

With respect to claim 36, the last pouch in the storage system of Morton can be adapted to be a wrap-around cover of the closes storage system.

9. Claims 1,17, 19, 20-22 and 32-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Vogt (2,715,493). Vogt '493 discloses a storage system, comprising: two or more pouches, joined sequentially pouch-lip to pouch lip by a flexible coupling

portion, wherein each coupling portion flexes to permit manipulation of the joined set of pouches. See Figures 1-5 embodiments.

With respect to claim 21, note adhesive (5) on top of the flap (40) for use in sealing the mouth end of the pouch.

The storage system is inherently capable of dispensing medication.

10. Claims 1, 2, 12, 13, 15, 16, 19-20 and 32-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Frankeny (6,419,082). Frankeny '082 discloses a storage system, comprising: two or more pouches, joined sequentially pouch-lip to pouch lip by a flexible coupling portion, wherein each coupling portion flexes to permit manipulation of the joined set of pouches. See Figures 1A-9B embodiments.

The storage system is inherently capable of dispensing medication.

11. Claims 1-7, 12-16, 18-20, 24, 28 and 32-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Henkel (4,762,225). Henkel '225 discloses a storage system, comprising: two or more pouches, joined sequentially pouch-lip to pouch lip by a flexible coupling portion, wherein each coupling portion flexes to permit manipulation of the joined set of pouches. See Figures 1-15 embodiments.

The storage system is inherently capable of dispensing medication.

With respect to claims 14 and 24, note air layers/cushions 32 and 34.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3-7 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frankeny '082.

The product-by-process limitations in claims 4 and 5 results in no structure that is different from Frankeny '082.

With respect to the material of the pouches, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

14. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henkel '225 in view of Saetre et al. (4,502,596). Henkel '225 as described above discloses all the limitations of the claims except for means for hanging the storage system. Saetre '596 discloses a storage system with hanging means for convenient carrying and hanging of the storage system. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide hanging means to the storage system of Henkel '225 as taught by Saetre '596 for convenient carrying and hanging of the storage system.

15. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Morton, Vogt '493, Frankeny '082, Henkel '225 in view of Kinigakis et al. 95,941,641). Each of Morton, Vogt '493, Frankeny '082, Henkel '225 as described above disclose all the limitations of the claims except for a wrap-around re-closeable pouch. Kinigakis '641 discloses that it is desirable to have wrap-around re-closeable pouches to define a variety of product-confining volumes. Therefore, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to make the pouch of any one of Morton, Vogt '493, Frankeny '082, Henkel '225 wrap-around re-closeable pouch as taught by Kinigakis '641 to define a variety of product-confining volumes.

16. Claims 30-31 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Morton, Vogt '493, Frankeny '082, Henkel '225 in view of Sejzer (5,291,990). Each of Morton, Vogt '493, Frankeny '082, Henkel '225 as described above disclose all the limitations of the claims except for the pouches having labels. Sejzer '990 discloses that it is desirable to have labels on pouches for easier identification of items held therein. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide labels to the pouches of any one of Morton, Vogt '493, Frankeny '082, Henkel '225 as taught by Sejzer '990 for easier identification of items held therein.

The product-by-process limitations in claim 39 results in no structure that is different from any one of Morton, Vogt '493, Frankeny '082, Henkel '225 as modified above.

17. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Morton, Vogt '493, Frankeny '082, Henkel '225 in view of Butler (4,226,330). Each of Morton, Vogt '493, Frankeny '082, Henkel '225 as described above disclose all the limitations of the claims except for the pouches having separate pockets with ruptureable means for mixing products held therein. Butler' 330 discloses that it is desirable to have separate pockets with ruptureable means in pouches that are easily ruptured for the release and mixing of contents contained therein. Therefore, it would

have been obvious to one of ordinary skill in the art at the time the invention was made to provide separate pockets with rupture able means to the pouches of any one of Morton, Vogt '493, Frankeny '082, Henkel '225 as taught by Butler' 330 for the release and mixing of contents contained therein.

18. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Morton, Vogt '493, Frankeny '082, Henkel '225 in view of Leary, Jr. (3,057,539). Each of Morton, Vogt '493, Frankeny '082, Henkel '225 as described above disclose all the limitations of the claims except for the pouches having a tear-off corner. Leary '539 discloses that it is desirable to have tear-off corners in pouches for easier opening of the pouches. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide tear-off corners in the pouches of any one of Morton, Vogt '493, Frankeny '082, Henkel '225 as taught by Leary '539 for easier opening of the pouches.

Response to Arguments

19. Applicant's arguments filed February 14, 2006 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "coupling portion" which means the span of flexible material extending from a rear pouch-lip of a first pouch to the front pouch-lip of the next pouch in a series of pouches, "coupling portion" requiring the presence of hinges A, B and C and that a divider separates the pouch into two usable storage compartments) are not recited in the rejected claim(s). Although the claims are interpreted in light of the

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specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

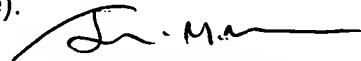
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
April 26, 2006